



# Kentucky Tax Alert



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## Dana Bynum Mayton Named KRC Secretary

Effective Monday, June 18, 2001, Dana Bynum Mayton was named KRC Secretary. Mayton, formerly Commissioner of KRC's Department of Law, replaces Mike Haydon, who was named Deputy Secretary to Crit Luallen, the Secretary of the Governor's Executive Cabinet. "The commonwealth is facing some real challenges in the months and years ahead and I appreciate this opportunity to work closely with Secretary Luallen and with Governor Patton to continue to move Kentucky forward," Haydon said. Haydon had been KRC Secretary since December 1999.



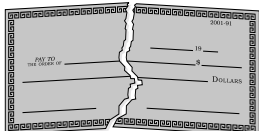
Mayton had served as commissioner since February 1999. Prior to that she served as a legislative committee analyst/staff attorney with the Appropriations and Revenue Committee of the Kentucky General Assembly. Mayton began her career in Kentucky with KRC's Division of Legal Services where she served three years. In 1996, she was appointed director of KRC's Division of Compliance and Taxpayer Assistance.

She is a native of Arkansas and graduated from Arkansas State University and the University of Arkansas at Little Rock School of Law. Mayton resides in Shelbyville with her husband, Doyle, and six-year-old son, Turner.

"I'm honored to be asked by Governor Patton to take another step in my career of service to the commonwealth," Mayton said. "Although we will greatly miss Secretary Haydon, I look forward to a seamless transition for our employees and the taxpayers of the commonwealth."

## Federal Rebate Checks Not Taxable

According to the IRS, 1.2 million checks are expected to be mailed to Kentucky residents beginning in July. The Treasury will send checks to most taxpayers this year as an advance payment of a 2001 tax credit under the Federal Economic Growth and Tax Reconciliation Act of 2001, signed by President Bush on June 7. The rebate checks are a reduction of tax and are not included in income for Kentucky or federal individual income tax purposes. Refunds of federal income tax are not reported as income on the Kentucky return because the tax is not an allowable deduction.



Taxpayers may expect a letter from the IRS describing the amount of the advance payment check and the week it will be sent. IRS will also send a letter of explanation to taxpayers who are not eligible for the advance payment. IRS suggests that practitioners advise their clients to keep the letter with their other tax records for 2001. Those who did not receive all their credit as an advance payment will claim the difference as a nonrefundable credit on the 2001 federal return.

Detailed information about the advance payment is available on the IRS web site at [http://www.irs.gov/ind\\_info/apinfo/index.html](http://www.irs.gov/ind_info/apinfo/index.html).

## Two TSCs Relocate

The Corbin and Paducah Taxpayer Service Centers are relocating in July. The address for the Corbin office is 521 East Cumberland Parkway, Suite 2. The new address for the Paducah office is Clark Business Complex, Suite G, 2928 Park Avenue. All phone and fax numbers remain the same.



## State Real Property Tax Rate Set

The 2001 state real property tax rate has been set at 13.6 cents per \$100 of assessed value. Under House Bill 44, the rate must be reviewed each year and adjusted to ensure that no more than a 4 percent cumulative increase in revenues is realized over the previous year. Last year's rate was 14.1 cents.

The establishment of the 2001 tax rate enables those counties certified by KRC to proceed with tax bill preparation once the local rates are set.

## Rebate Checks Subject to Offset

In February 2000, KRC became only the sixth state to participate in the Treasury Offset Program. In conjunction with the Federal Management Service, this allows KRC to offset a taxpayer's federal refund to pay Kentucky individual income tax liabilities, providing the taxpayer has been notified via registered mail of the liability and given 60 days to pay. As of May 31, KRC had collected a net \$1,766,524 for the current fiscal year.

KRC has been notified by the United States Department of Treasury that all rebate checks issued under the Federal Economic Growth and Tax Reconciliation Act of 2001 will be subject to offset. These checks are due to be mailed to taxpayers beginning in July. Any taxpayer whose liability meets the criteria for offset will be subject to having their federal rebate check applied against their Kentucky individual income tax liability.

## KRC Offices Closed Sept. 3 for Labor Day

Pursuant to KRS 18A.190, all KRC offices are closed on Monday, Sept. 3, 2001, in observance of Labor Day.

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## Tips for Filing Amended Returns

Did you forget to include an item on your 2000 Kentucky individual income tax return? Each year thousands of Kentucky taxpayers receive information after they file their return that results in either an additional refund or an additional amount due. If you need to make changes to your already filed tax return, you will need to file Form 740-X—Amended Kentucky Individual Income Tax Return. If you are a nonresident or part-year resident taxpayer you will need to use Form 740-NP and mark the return as an amended return in the appropriate box.

KRC personnel often correct Kentucky returns during processing which may eliminate the need to file an amended return. However, if corrections are not made during processing of refund returns or if the original return did not claim a refund, an amended return must be filed in order to make any corrections to the original return. If you owe additional tax, file an amended return and pay the tax as soon as possible to reduce penalties and stop accruing interest.

When completing Form 740-X please include copies of any schedules that have been changed or any Forms W-2 you did not include with your original return. Also provide a complete explanation of the changes on page two of the return. A blank space is provided on page one of Form 740-X for the seven-digit validating number of the original filed return. The validating number is either stamped on the face of the taxpayer's cancelled check for pay returns, or printed on the face of the taxpayer's refund check. This number will assist cabinet personnel in locating the original return.

Some of the most common reasons for filing amended Kentucky returns are to:

- report additional Forms K-2, Wage and Tax Statement;
- adjust the number of dependents or tax credits claimed;
- report additional income such as interest or income from partnerships;
- itemize deductions rather than take the standard deduction;
- claim the low income credit;
- claim pension exclusions;
- correct a failure to claim carryover amounts from Schedule D;
- claim credit for taxes paid to other states; and
- change filing status.

Forms are available from:

Support Services Branch for bulk mailings at (502) 564-3658,  
TaxFax, fax-on-demand service at (502) 564-4459,  
KRC's Online Taxpayer Service Center at <http://revenue.state.ky.us>  
or one of the KRC's 11 regional taxpayer service centers:

Ashland  
134 Sixteenth Street  
(606) 920-2037

Bowling Green  
1502 Westen Street  
(270) 746-7470

Corbin  
521 East Cumberland Parkway, Suite 2  
(606) 528-3322

Hazard  
233 Birch Street  
(606) 435-6017

Hopkinsville  
181 Hammond Drive  
(270) 889-6521

Lexington  
301 East Main Street, Suite 500  
(859) 246-2165

Louisville  
620 South Third Street, Suite 102  
(502) 595-4512

Northern Kentucky  
Turfway Ridge Office Park  
7310 Turfway Rd., Suite 190  
(859) 371-9049

Owensboro  
401 Frederica Street  
Building C, Suite 201  
(270) 687-7301

Paducah  
Clark Business Complex, Suite G  
2928 Park Avenue  
(270) 575-7148

Pikeville  
Uniplex Center  
126 Trivette Drive, Suite 203  
(606) 433-7675

For assistance with completing the amended return, call the Division of Compliance and Taxpayer Assistance at (502) 564-4581 or any of the taxpayer service centers located throughout the state.



## Electronic Filing Increases Nearly 20 Percent

KRC reports that the use of electronic filing methods for 2000 individual income tax returns increased by nearly 20 percent over the 1999 filing season. Electronic returns fall into one of three categories: TeleFile (telephone filing), Online (Internet filing), or Electronic (typically tax preparers). This year to date, 495,090 returns have been filed electronically compared to 416,947 returns in 1999.

The number of electronically filed returns by preparers this year increased to 401,864 compared to 332,700 in 1999. In its third year of offering TeleFile, KRC accepted 47,528 returns filed by phone. The previous year, more than 54,000 returns were filed by phone. The number of taxpayers filing online in 2000 increased to 45,698 compared to 29,534 filed in 1999.

According to former KRC Secretary Mike Haydon, "Electronic filing is on the cutting edge of income tax processing. It is fast, convenient, and easy. Most returns received in the electronic format are processed in about two weeks, which is considerably quicker than mailing your return. We are gratified at the 20 percent increase over the 1999 filing season and urge taxpayers to continue using this modern filing method. Electronic filing is more efficient and drastically reduces the number of errors in processing. It is a win-win situation for the taxpayers and the Cabinet."

KRC will continue to accept 2000 individual income tax returns filed electronically and via the Internet through Oct. 15, 2001. Those eligible to use telephone filing, TeleFile, will have until Aug. 15, 2001, to file returns.





## Court Case Updates



**PropertyTax**—At issue in *Comcast Cablevision of the South, Inc. v. Revenue Cabinet*, K99-R-8 were the public service corporation property tax assessments of a cable television company for the years 1996 and 1997. The Kentucky Board of Tax Appeals (KBTA) agreed with the taxpayer's argument that a portion of its cable television system's fair cash value should be classified as nonoperating intangible property on the theory that this value represented future earning expectations of the system from investment and services not physically in place on the relevant assessment dates. The effect of the KBTA's ruling is that 34 percent and 42 percent of the KRC's original 1996 and 1997 assessments respectively will be exempt from local taxation and subject to state taxation at a lower rate.

Both the taxpayer and KRC have appealed the KBTA's decision to the Franklin Circuit Court. Therefore, the KBTA's ruling is not final.

On May 10, 2001, the KBTA rendered a decision in another public service corporation property tax case, *Excel Telecommunications, Inc. v. Revenue Cabinet*, K96-R-27. The KBTA ruled that the taxpayer in this case, a switchless reseller of long distance telephone services, was legally and factually a telephone company subject to assessment under KRS 136.115-180 as a public service corporation.

The KBTA further rejected the taxpayer's contention that it had no property in Kentucky. It found that the taxpayer did indeed have property in this state: the right to operate as a telephone company in Kentucky and a leasehold interest in or right to use equipment or property of another telephone company's Kentucky network.

Finally, the KBTA agreed with the valuations assigned to the taxpayer's public service corporation property for the tax years in question (1994 and 1995) by KRC's expert witness. The KBTA found the taxpayer's valuation evidence to be of dubious quality and in particular, the taxpayer's expert testimony to be unconvincing and of little probative value. The KBTA therefore fixed the taxpayer's 1994 and 1995 assessments in accordance with the values established by KRC's expert.

Excel Telecommunications, Inc. has appealed the KBTA's decision to the Franklin Circuit Court. Therefore, this decision is not final.

In *Revenue Cabinet v. Mago Construction Co., Inc.*, 99-CI-00626, the taxpayer contended that the extraction of limestone from a quarry was a manufacturing process and that in accordance with KRS 132.020(1) and 132.200(4) the tangible personal property used in this extraction activity was exempt from local ad valorem taxation and instead subject to state ad valorem taxation at the lower rate of 15¢ per \$100 of value.

Also at issue was the taxpayer's classification of its asphalt plant as Schedule B, Class IV property rather than Schedule B, Class VI property for tangible personal property tax purposes. The difference between these two classifications determined the rate of depreciation utilized in arriving at the fair cash value of the property in question. The former classification (Class IV), which had been utilized by the taxpayer on its tax return, carried a shorter economic life, thereby resulting in greater depreciation taken, which in turn produced a lower valuation or assessment of the property in question. This was contrary to the Class VI classification mandated by KRC's tangible personal property tax return.

KBTA rendered a decision in the taxpayer's favor. In an opinion and order rendered on April 26, 2001, the Franklin Circuit Court has now reversed the KBTA. The circuit court holds that the blasting or severance of limestone from the earth is not manufacturing. Any manufacturing with respect to the limestone, the court rules, begins with the removal of the shot rock from the quarry to the crushing apparatus and not before.

On the classification issue, the record in the case reflected that the taxpayer had not submitted an alternative method of valuing the asphalt equipment to KRC for review. The court held that KRC must be given an opportunity to review an alternative valuation before an appeal can properly

be taken to the KBTA. Thus, the taxpayer had failed to exhaust its administrative remedies in this case and KRC's tangible personal property tax return's valuation of the asphalt equipment under Class VI must stand and should not have been disturbed by the KBTA.

The taxpayer has filed a motion for reconsideration. Therefore, this case is not final.

On May 22, 2001, in *Monumental Life Insurance Company v. Revenue Cabinet, et al*, Civil Action No. 00-CI-06647, the Jefferson Circuit Court entered an order dismissing an action brought by Monumental Life Insurance Company seeking a judicial declaration that it is entitled to a refund of the property taxes imposed by KRS 136.320 upon domestic life insurance companies. These property taxes are imposed for state purposes as well as by the county and city in which the principal office of the company in question is located. In this case, the City of Louisville and Jefferson County were named as defendants in addition to KRC.

The circuit court relied upon the well settled principle of law that a litigant will ordinarily be required to exhaust administrative remedies before resorting to the courts for relief. The mere presence of constitutional issues did not relieve Monumental Life of the requirement that it exhaust the administrative remedies prescribed by law for resolution of tax disputes.

In addition, Monumental Life had already filed an appeal with the KBTA. Accordingly, the court also based its decision upon the principle that a court will decline to award declaratory relief where there is already pending a proceeding before an administrative body having jurisdiction over the subject matter in question. The KBTA is vested with exclusive jurisdiction under KRS 131.340 to review KRC's determination challenged by Monumental Life. If Monumental Life is dissatisfied with the KBTA's decision, it can then take an appeal to the circuit court pursuant to KRS 131.370. The circuit court accordingly ruled that it did not have jurisdiction to proceed in this case and that Monumental Life must instead pursue its appeal pending before the KBTA.

No appeal was taken from the Jefferson Circuit Court's decision in this case. This decision is therefore now final. Monumental Life's tax appeal before the KBTA is still pending.

**Sales and Use Tax**—On May 24, 2001, the Kentucky Supreme Court rendered an opinion in the use tax case of *Revenue Cabinet v. Lazarus, Inc., et al*, 1999-SC-1070-DG. The court's opinion reverses an earlier opinion of the Court of Appeals in the taxpayer's favor and reinstates KRC's use tax assessments.

In this case, the taxpayer operated retail stores selling general consumer merchandise at various locations in Kentucky. The taxpayer distributed newspaper advertising inserts through several newspapers in Kentucky and distributed catalogs to potential Kentucky customers by mailings directly from out-of-state printers to those customers.

In the case of the inserts, the taxpayer designed the inserts and sent proofs to a printer outside Kentucky for production. The printer shipped the inserts to Kentucky newspapers in accordance with the taxpayer's instructions. The newspapers then stored the inserts for 10 to 14 days before distributing the inserts.

The catalogs were likewise designed by the taxpayer and were printed outside Kentucky at the taxpayer's direction. Ultimately, the catalogs were mailed to Kentucky households by the out-of-state printer, using address labels supplied by the taxpayer or as part of a package with other advertising materials as directed by the taxpayer.

The Supreme Court held that under the plain and unambiguous language of the use tax statutes, use tax was properly assessed in the case of both the taxpayer's distribution of catalogs and newspaper advertising inserts in this state. The court noted that the General Assembly used broad language

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### Court Case Updates (continued from page 3)

so that the use tax would reach all forms of tangible personal property used, stored, or otherwise consumed in this state. Under KRS 139.310 and 139.190, the use tax clearly applies to "the exercise of any right or power incident to the ownership of property or any transaction in which possession is given." In this case, while the taxpayer did not have actual possession of the newspaper advertising inserts, it maintained the right of complete control over the handling and distribution of the inserts after their delivery to Kentucky newspapers for distribution.

The Supreme Court viewed the distribution of the catalogs as being indistinguishable from the inserts for purposes of the application of the use tax. The court found to be persuasive authority the United States Supreme Court's decision in *D.H. Holmes Company, Ltd. v. McNamara*, 486 U.S. 24 (1988).

The Kentucky Supreme Court rejected the taxpayer's argument with respect to the inserts that the Cabinet's failure to assess use tax in a total of 18 audits involving six retailers over a 30-year period constituted a contemporaneous construction of the statutes that precluded the use tax assessments at issue in this case. The court held that the application of the doctrine of contemporaneous construction, which is but a judicial tool for statutory construction, could not be founded upon an administrative agency's mere failure to correctly apply the law. Contemporaneous construction could not be based upon an administrative agency's mistakes or mere non-action, the court declared.

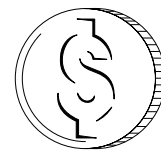
In *Smithkline Beecham Corporation v. Revenue Cabinet*, 1998-CA-002415 MR, the Kentucky Court of Appeals has denied KRC's petition for rehearing. This case is therefore now final.

### PSC Rate Set for Fiscal Year 2001-2002

The Public Service Commission's (PSC) annual maintenance assessment rate for Fiscal Year 2001-2002 is 1.898 mils for each \$100 of gross intrastate receipts. This millage rate funds the PSC's anticipated operations.

The rate is set each year by the Finance and Administration Cabinet and takes effect July 1. The minimum assessment, according to KRS 278.130 is \$50. Billings are issued by KRC and payments are due on or before July 31 of each year. The penalty for failure to pay the assessment is \$1,000 plus \$25 per day for each day overdue, pursuant to KRS 278.990(3).

Intrastate business conducted by jurisdictional utilities in Kentucky during the preceding calendar year is the basis for the assessment.



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Kentucky and its citizens, and admin-  
ister the tax laws of the Common-  
wealth in a fair and impartial manner.

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